

## Options for Closing the Gap on Forestry Management Measures

### January 2015

#### Background/Context

Additional progress is needed in Oregon on forestry management measures so that they are protective of water quality and fish habitat. The following describes how Oregon may choose to proceed to adopt additional protective forestry measures and close the gap for purposes of CZARA and coho recovery.

#### General CZARA Guidelines for Approval

There are two pathways for states to achieve an approvable program: 1) *regulatory program*; **OR** 2) *voluntary approach*. A voluntary approach requires that the State provide a program description, monitoring, tracking, and an enforceable authority to back up the voluntary program. If the State chooses to pursue a voluntary approach, the State needs to identify state enforcement authorities that can be used to prevent nonpoint pollution and expressly commit to use those authorities if voluntary measures are not complied with or where voluntary measures are inadequate in delivering the needed protections that could be relied upon notwithstanding the statutory “BMP safe harbor” provision in the Forest Practices Act. The State needs to describe the mechanism or process that links the implementing agency with the enforcement agency.

#### Reasonable Options for Oregon to Get to an Approvable CZARA Program and Address Limitations in Forestry That Affect Coho Recovery

- **Riparian Buffers**
  - **Medium and Small-Fish Bearing Streams: State currently pursuing regulatory program**
    - Current Deficiencies/Shortfall: Small no-cut buffer for small and medium fish-bearing streams. Creates temperature, erosion and sediment problems. Inadequate riparian buffers are limiting coho recovery.
    - Examples of State Actions Needed: 1) Complete riparian rule by end of 2015; 2) Rule should cover a broad range of medium and small-fish bearing streams; and 3) Rule should provide an adequate no cut buffer with a wider riparian management zone consistent with National Marine Fisheries (NMFS) science.
  - **Small, Non-fish bearing streams: State not currently pursuing a regulatory program; voluntary approach would need to address the following**
    - Current Deficiencies/Shortfall: Inadequate (10 foot) and limited (only for perennial streams) buffer for non-fish bearing streams. Creates temperature, erosion and sediment problems for salmon spawning areas and downstream habitat. Inadequate protections are limiting coho recovery.

- Examples of State Actions Needed: 1) Adequate no cut buffer with a wider riparian management zone consistent with National Marine Fisheries (NMFS) science; 2) Monitoring, tracking, and reporting similar to other ODF programs for other tree harvests; and 3) Identify ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented.
- **Roads: voluntary approach would need to address the following**
  - Current Deficiencies/Shortfall: Current ODF voluntary program does not include legacy roads. Voluntary program does not include monitoring and tracking nor does identification of enforceable authorities to back-up voluntary program.
  - Examples of State Actions Needed: 1) Use voluntary approach to include legacy roads in road inventory; 2) Include legacy roads in roads inventory, including legacy roads having potential to deliver sediment to streams; 3) Develop ranking system to establish priorities for road repair or decommissioning; 4) Conduct evaluation, problem identification process and schedule for repairing problem roads; 5) Monitor and track voluntary measures. Examples could include those similar to WA's and ID's; 6) Identify ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented. **(For effective voluntary approach, 1-6 are needed as a package. All voluntary approaches need monitoring, tracking and identification of enforcement authorities that can be used if voluntary approach fails to achieve the desired results.)**
- **Landslides: voluntary approach would need to address the following**
  - Current Deficiencies/Shortfall:
  - Examples of State Actions Needed: 1) Measures to protect landslide areas; 2) Voluntary programs to encourage forestry BMPs to protect high-risk landslide areas and ensure that roads are designed to minimize slope failure risk; 3) Monitor and track voluntary measures (Examples could include those similar to Washington's and Idaho's programs); 4) Identify ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented. **(All voluntary approaches need monitoring, tracking and identification of enforcement authorities that can be used if voluntary approach fails to achieve the desired results.)**
- **Spray Buffers for Aerial Application of Herbicides on Non-Fish Bearing Streams: voluntary approach would need to address the following**
  - Current Deficiencies/Deficiencies: No spray buffer to protect stream from directly application to water.
  - Examples of State Actions Needed: 1) If the state adopts adequate riparian protections for non-fish bearing streams, it may suffice as a protective herbicide spray buffers. Otherwise, the state may choose to 1) Revise ODF Notification of

Operation form to add a check box for aerial applicators to certify that they will adhere to FIFRA labels for all stream types; 2) Guidelines for voluntary buffer protections for aerial application of herbicides on non-fish bearing streams; 3) Monitor and track voluntary measures using existing pesticide regulations; 4) Explore ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented.

## Options for Closing the Gap on Forestry Management Measures

January 2015

### Background/Context

Additional progress is needed in Oregon on forestry management measures so that they are protective of water quality and fish habitat. The following describes how Oregon may choose to proceed to adopt additional protective forestry measures and close the gap for purposes of CZARA and coho recovery.

### General CZARA Guidelines for Approval

There are two pathways for states to achieve an approvable program: 1) *regulatory program*; **OR** 2) *voluntary approach*. A voluntary approach requires that the State provide a program description, monitoring, tracking, and an enforceable authority to back up the voluntary program. If the State chooses to pursue a voluntary approach, the State needs to identify state enforcement authorities that can be used to prevent nonpoint pollution and expressly commit to use those authorities if voluntary measures are not complied with or where voluntary measures are inadequate in delivering the needed protections that could be relied upon notwithstanding the statutory “BMP safe harbor” provision in the Forest Practices Act. The State needs to describe the mechanism or process that links the implementing agency with the enforcement agency.

### Reasonable Options for Oregon to Get to an Approvable CZARA Program and Address Limitations in Forestry That Affect Coho Recovery

- **Riparian Buffers**

- **Medium and Small-Fish Bearing Streams:** State currently pursuing regulatory program

- **Current Deficiencies/Shortfall:** Small no-cut buffer for small and medium fish-bearing streams. Creates temperature, erosion and sediment problems. Inadequate riparian buffers are limiting coho recovery.
    - **Examples of State Actions Needed:** 1) Complete riparian rule by end of 2015; 2) Rule should cover a broad range of medium and small-fish bearing streams; and 3) Rule should provide an adequate no cut buffer with a wider riparian management zone consistent with National Marine Fisheries (NMFS) science.

- **Small, Non-fish bearing streams:** State not currently pursuing a regulatory program; voluntary approach would need to address the following

- **Current Deficiencies/Shortfall:** ~~No buffers~~ Inadequate (10 foot) and limited (only for perennial streams) buffer for non-fish bearing streams. Creates temperature, erosion and sediment problems for salmon spawning areas and downstream habitat. Inadequate protections are limiting coho recovery.

Comment [sjs1]: Ex. 5 - Attorney Client

**Ex. 5 - Attorney Client**

- Examples of State Actions Needed: 1) Adequate no cut buffer with a wider riparian management zone **Ex. 5 - Deliberative** 2) Monitoring, tracking, and reporting similar to other ODF programs for other tree harvests; and 3) Identify ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented.

- **Roads: voluntary approach would need to address the following**

- Current Deficiencies/Shortfall: Current ODF voluntary program does not include legacy roads. Voluntary program does not include monitoring and tracking nor does identification of enforceable authorities to back-up voluntary program.
- Examples of State Actions Needed: 1) Use voluntary approach to include legacy roads in road inventory; 2) Include legacy roads in roads inventory, including legacy roads having potential to deliver sediment to streams; 3) Develop ranking system to establish priorities for road repair or decommissioning; 4) Conduct evaluation, problem identification process and schedule for repairing problem roads; 5) Monitor and track voluntary measures. **Ex. 5 - Deliberative** 6) Identify ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented. (For effective voluntary approach, 1-6 are needed as a package. All voluntary approaches need monitoring, tracking and identification of enforcement authorities that can be used if voluntary approach fails to achieve the desired results.)

Comment [sjs2]: **Ex. 5 - Attorney Client**

**Ex. 5 - Attorney Client**

Comment [sjs3]: **Ex. 5 - Attorney Client**

**Ex. 5 - Attorney Client**

Comment [sjs4]: **Ex. 5 - Attorney Client**  
**Ex. 5 - Attorney Client**

- **Landslides: voluntary approach would need to address the following**

- Current Deficiencies/Shortfall:
- Examples of State Actions Needed: 1) Measures to protect landslide areas; 2) Voluntary programs to encourage forestry BMPs to protect high-risk landslide areas and ensure that roads are designed to minimize slope failure risk; 3) Monitor and track voluntary measures. **Ex. 5 - Deliberative** 4) Identify ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented. (All voluntary approaches need monitoring, tracking and identification of enforcement authorities that can be used if voluntary approach fails to achieve the desired results.)

Comment [sjs5]: **Ex. 5 - Attorney Client**

**Ex. 5 - Attorney Client**

Comment [PC6]: Need short description of current inadequacy.

- **Spray Buffers for Aerial Application of Herbicides on Non-Fish Bearing Streams: voluntary approach would need to address the following**

- Current Deficiencies/Deficiencies: No spray buffer to protect stream from directly application to water.
- Examples of State Actions Needed: 1) If the state adopts adequate riparian protections for non-fish bearing streams, it may suffice as a protective herbicide spray buffers. Otherwise, the state may choose to 1) Revise ODF Notification of

Operation form to add a check box for aerial applicators to certify that they will adhere to FIFRA labels for all stream types; 2) Guidelines for voluntary buffer protections for aerial application of herbicides on non-fish bearing streams; 3) Monitor and track voluntary measures using existing pesticide regulations; 4) Explore ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented.

**Comment [PC7]:** Help me out here. What exactly are we saying here or asking for?